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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

FILE: [REDACTED] Office: San Antonio

Date: MAY 9 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Antonio, Texas, and is before the Administrative Appeals Office on appeal. The appeal is rejected. The district director's decision will be withdrawn, and the application will be declared moot.

The applicant is a native and citizen of Mexico who alleges that he was deported from the United States on November 6, 1995. The Bureau has no record that the applicant has ever been deported. The record contains a copy of his Mexican passport that contains a nonimmigrant visa issued on May 23, 1990. The passport contains a notation showing that the applicant withdrew his application for admission on November 6, 1995.

The district director requested evidence to support the applicant's assertion that he had been deported. Failing to receive that evidence the district director denied the application pursuant to section 291 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1361.

The regulations permit any alien applicant to withdraw his or her application for admission in lieu of exclusion or removal proceedings if the alien agrees to return to his or her home country voluntarily. According to the limited evidence in the record, it appears that the applicant withdrew his application for admission on November 6, 1995, and returned to Mexico in lieu of proceedings. Since there is no evidence in the record to establish that the applicant has been formally deported or removed from the United States, the district director's decision will be withdrawn, the appeal will be rejected, and the application will be declared moot.

ORDER: The appeal is rejected. The district director's decision is withdrawn, and the application is declared moot.